

REMARKS

Claims 1-44 are pending in the application, of which claims 1 and 31 are independent. The Office action rejected claims 1-30, 39, 40 and 43 under 35 U.S.C. § 103(a) as being obvious over Bouchard (U.S. Patent No. 5,465,079) in view of Obradovich (U.S. Patent Publication 2004/0036601) or Bouchard in view of Obradovich in further view of Moore (U.S. Patent No. 6,370,454), Burge (U.S. Patent Publication 2002/0103622), Levine (U.S. Publication No. 2003/0014176), Graf, et al. (U.S. Patent No. 5,390,117), or Kurz, et al. (U.S. Patent No., 6,449,572). Applicants respectfully request reconsideration and favorable action in this case.

The applicants respectfully traverse the rejection of claims 1-30, 39, 40 and 43 as obvious over Bouchard in view of Obradovich, alone or in combination with the other cited references.

The applicants assert that Obradovich does not qualify as prior art against the instant application under 35 U.S.C. § 102(a), 102(b), or 102(e) and therefore is not available as a reference under 35 U.S.C. § 103(a). Applicants submit with this response a declaration under 37 CFR § 1.131 establishing invention in the United States at least as early as September 21, 2000, the priority date of the Obradovich reference, of subject matter including the determination and use of operator cognitive load in determining an operator assessment value (page 5, item 9).

Each of the pending claims recites, or depends from a claim that recites, a step or structure for determining an operator cognitive load and using operator cognitive load in determining an operator assessment value. None of the other references, Bouchard, Moore, Burge, Levine, Graf, or Kurz, disclose or suggest determining an operator cognitive load, much less using operator cognitive load in determining an operator assessment value. Therefore, the remaining cited references, Bouchard, Moore, Burge, Levine, Graf, or Kurz

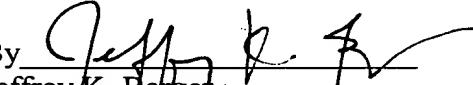
cannot anticipate the pending claims or render them obvious. As such, each of the pending claims is allowable and the rejection of claims 1-30, 39, 40 and 43 under 35 U.S.C. § 103(a) should be withdrawn.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the examiner is respectfully requested to pass this application to issue. If there are matters that can be discussed by telephone to further the prosecution of this application, the applicants respectfully request that the examiner call its agent at the number listed below.

Applicant believes no fee is due with this response. However, if a fee is due, the Commissioner is directed to charge Deposit Account No. 13-2855.

Dated: September 9, 2004

Respectfully submitted,

By 
Jeffrey K. Berger

Registration No.: 51,460
MARSHALL, GERSTEIN & BORUN LLP
233 S. Wacker Drive, Suite 6300
Sears Tower
Chicago, Illinois 60606-6357
(312) 474-6300
Agent for Applicant